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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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JOSEPH F. HUTCHINSON, et al.,

Plaintiffs,

vs.

FIFTH THIRD BANCORP,

Defendant.

CASE NO.
C- 1- 01- 789

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JOSEPH F. HUTCHISON

of lawful age, a plaintiff herein, being first duly sworn as hereinafter certified, was examined and deposited as follows:

CROSS- EXAMINATION

BY MR. FISCHER:

Q. State your name, sir.

A. Joseph F. Hutchison.

Q. Have you ever been deposed before?

A. No.

Q. Have you ever attended a deposition?

A. I don't think so.

Q. Do you understand that what we'll be doing here is I'll be asking you questions and you're to answer them to the best of your ability?

A. Yes, sir.

Q. And that if you don't understand a question, you could just tell me and I'll try to rephrase it or try to get an understanding --

A. Yes, sir.

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21 Q. -- for each of us. And that if you do
 22 answer the question, I'll assume that you understood
 23 it, okay?

24 A. That's fine.

25 Q. All right. What's your current residence

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1 address, sir?

2 A. 11633 Almahurst, A-l-m-a-h-e-r-s-t, Court,
 3 Cincinnati, Ohio, 45249.

4 Q. What part of town is that?

5 A. Symmes Township.
 6 (Exhibit 6 was marked for identification.)

7 Q. Mr. Hutchison, have you ever seen that
 8 document before?

9 A. No, sir.

10 Q. Have you seen any notice of your
 11 deposition before?

12 A. I received a letter from the lawyers.

13 Q. Don't tell me what was in that letter.

14 A. No, it was just relative to the
 15 deposition, that's all.

16 Q. You understood you were to be deposed?

17 A. Yes. No problem.

18 Q. You understand you're a named party in
 19 that lawsuit?

20 A. Yes, sir.

21 Q. And that you and Mr. Buchheid are the two
 22 plaintiffs, correct?

23 A. Yes.

24 Q. Did you go to college?

25 A. I went to Xavier University.

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1 Q. And graduated?

2 A. 1965.

3 Q. And what type of degree?

4 A. Accounting.

5 Q. And up to the time you were with Suburban
 6 can you just give me your professional background?

7 A. Okay. I graduated from school in 1965. I
 8 was an auditor with the General Tire & Rubber Company
 9 from '65 to '66. '66 to '69, I was in the military.

10 Q. Which branch?

11 A. The Army.

12 Q. Where did you serve?

13 A. Korea. I came out a first lieutenant.

14 Q. Honorable?

15 A. Yes, sir. After college I went to work
 16 for -- excuse me, after the Army I went to work for
 17 Anaconda Copper Company as an auditor for
 18 approximately seven, eight months, which would have
 19 been from 1969, probably July 1st, '69 through March
 20 of '70.

21 Q. Is that -- you were stationed --

22 A. No, this is when I was -- this is after I
 23 got back -- after I got out of the army I went to
 24 work with Anaconda Copper Company.

25 Q. Were you working out of Cincinnati?

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1 A. No, I was out of New York, New York. I
 2 did mostly traveling so I was very seldom in any one
 3 spot.

4 Q. So that was an auditor?

5 A. Yes.

6 Q. After Anaconda?

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A. I went to work for First National Bank in Dayton, Ohio, from probably July -- well, March of '69.

Q. I thought we were in '70 now.

A. I'm sorry, March of '70 until October of 1971. October of 1971, I went to work for the Federal Home Loan Bank of Cincinnati, I was there until July of 1982. July, I moved to -- relocated to Sarasota, Florida. I worked for Coast Federal in Sarasota from 1983 to 1992. '92, I came up to Cincinnati to run Suburban Federal.

Q. In your two audit positions I presume you had nothing to do with ESOP --

A. No.

Q. -- or ERISA for that time?

A. No.

Q. Same for the Army?

A. Yeah.

Q. What about First National Bank of Dayton,

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Ohio, did you do anything with ERISA or ESOP?

A. Nothing.

Q. Then you were at the Federal Home Loan Bank here in Cincinnati?

A. Cincinnati, yes.

Q. What were your duties there?

A. I started off as a financial analyst and when I left I was treasurer. I had various functions reporting to me.

Q. What were those functions?

A. Credit department for credit investments, various deposit services that we made available. I think those are the major ones.

Q. And you left that to go to Sarasota?

A. Sarasota.

Q. Why did you do that?

A. Well, it was right around when deregulation was coming about for the savings and loan industry. I thought it was a great opportunity to go to Sarasota, Florida.

Q. What did you do in Sarasota, Florida for Coast Federal?

A. I was their treasurer and eventually their executive vice president, chief financial officer.

Q. At the Federal Home Loan Bank did you have

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anything to do with ERISA or ESOP?

A. No. Nothing.

Q. One of the things in a deposition you're going to have to do, you did it in the end there, say yes or no.

A. I'm sorry. No, I did not.

Q. When people move their hands it's only with lawyers that things rattle up there.

Then at Coast Federal, as treasurer or executive VP and CFO, did you have anything to do with ERISA plans or ESOPs?

A. No. No, it was a separate area.

Q. So we're up to '92 then?

A. Yes.

Q. Good. What were your duties at Coast Federal as treasurer or a VP, CFO?

A. I had responsibilities for the investments. Let's see. Investments. I had the

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19 credit departments reporting to me. You know, that's
20 I think -- that's the main areas.

21 Q. Did those duties as a VP and CFO include
22 the general financial --

23 A. Yes.

24 Q. -- status of the company?

25 A. Yes. Yes.

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1 Q. The other thing in a deposition, you've
2 got to wait for me to finish.

3 A. I'm sorry.

4 Q. She can't take us both down at the same
5 time. If I interrupt you, please tell me.

6 A. We'll get this worked out eventually.

7 Q. That's fine. That's fine. At Coast
8 Federal or at First National Bank Dayton or Federal
9 Home Loan Bank were you involved in any negotiations
10 for the merger of a bank or thrift institution into
11 another bank or thrift institution?

12 A. Well, nothing at First National, nothing
13 obviously at the Federal Home Loan Bank, and I was at
14 Coast when they got acquired but I was not involved
15 in the negotiations.

16 Q. What was your involvement in that
17 acquisition?

18 A. Well, nothing really.

19 Q. You didn't really learn that much that
20 helped you later on with Suburban?

21 A. No.

22 Q. Correct?

23 A. Correct.

24 Q. Let's go to 1992 then, sir.

25 A. Okay.

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1 Q. And you -- how did you hear about
2 Suburban?

3 A. Had a call from Cincinnati that there was
4 an opening or potential opening at Suburban Federal
5 for president.

6 Q. Who called you?

7 A. Chuck Thiemann, who was the president of
8 the Federal Home Loan Bank of Cincinnati.

9 Q. Had you been interested in returning to
10 Cincinnati?

11 A. Well, since Coast was acquired in 1989, I
12 felt that over the long haul that the acquirer of
13 Coast was eventually going to sell the bank again,
14 and I had three daughters that I had to get through
15 college so I had to have a full-time job. So, to me,
16 it was an opportunity to come back to Cincinnati. I
17 mean, preferably, I would have stayed in Florida.

18 Q. For weather reasons?

19 A. Yeah. And the job was pretty good, too.
20 So, anyway, I had an opportunity. It just seemed to
21 me that it was -- for my long-term future it made
22 more sense to come back to Cincinnati and have the
23 opportunity to run a company up here.

24 Q. Had you asked people at the Federal Home
25 Loan Bank to keep an eye out for positions?

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1 A. Well, Chuck and I were friends. I worked
2 for him from '71 to '83. So occasionally he would
3 call me. And this just came about that this was the
4 right time since, as I said, the merger was in '89

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5 and I felt that at some point in time the company
6 that acquired us was going to go ahead and turn
7 around and sell us again. So it just made sense.

8 Q. Were you hired as president?

9 A. Yes.

10 Q. Was that as president of Suburban Bancorp
11 or Suburban Federal?

12 A. Well, at that time it was just Suburban
13 Federal.

14 Q. What were your duties as president of
15 Suburban Federal?

16 A. I was president and CEO. So I had
17 basically the whole report reporting -- or the
18 savings and loan reporting to me.

19 Q. At the time you started at Suburban
20 Federal were there any ERISA covered plans for the
21 benefit of the employees?

22 A. Yes, there were.

23 Q. Okay. What existed in 1992?

24 A. They had -- I think we called it a money
25 purchase plan. They had a 401(k). And I think

0013 1 that's it.

2 Q. And maybe some medical?

3 A. Oh, and medical benefits, too, I'm sure.
4 A medical plan.

5 Q. Today we're going to be talking about
6 monetary plans, okay?

7 A. Okay.

8 Q. We all understand there was always --

9 A. Sure.

10 Q. -- a medical plan.

11 A. Okay.

12 Q. Did you -- were you one of the recipients
13 of those benefits from the money purchase plan and
14 the 401(k)?

15 A. Yes, sir.

16 Q. Did you have to vest in it, in either of
17 those?

18 A. I'm sure we did but I honestly don't
19 remember the vesting period.

20 Q. You understand what a vesting period is?

21 A. Yes, I do.

22 Q. Did there come a time when your job
23 changed to president of Suburban Bancorp?

24 A. Yes, when we converted to stock.

25 Q. When was that?

0014 1 A. September of '93.

2 Q. Had the stock conversion been in the works
3 prior to your arriving at Suburban Federal?

4 A. No, sir.

5 Q. Was that your idea?

6 A. Well, when I got to Suburban in '92 we had
7 approximately 25 to 35 percent criticized assets and
8 we were under a cease and desist order with the
9 regulators.

10 So as they kept putting pressure on it to
11 raise capital, you can say it was my idea, but
12 theoretically it was the regulators pushing us to
13 convert to raise capital.

14 Q. And so the stock conversion took place in
15 September '93?

16 A. Yes.

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17 Q. It became a public company?
 18 A. Yes, sir, it did.
 19 Q. Now, had the, let's call them monetary
 20 benefit plans, changed at the time of the conversion?
 21 A. Well, at the time of the conversion we
 22 came up or we bought -- we had an ESOP plan.
 23 Q. That was the creation of the ESOP?
 24 A. Yes, sir.
 25 Q. Whose idea was the creation of the ESOP,
 0015
 1 to do that kind of type of financing?
 2 A. I think it was the board's decision.
 3 Q. Were you a member of the board also?
 4 A. Yes, I was.
 5 Q. And ESOP was created in 1993?
 6 A. Yes, sir.
 7 Q. Did you have any role that you know of in
 8 the creation of the ESOP?
 9 A. Any role? No, not that I -- I mean,
 10 nothing -- I mean, I'm just part of the board
 11 decision.
 12 Q. You were just one of several on the board?
 13 A. I think seven was on the board of
 14 directors.
 15 Q. Did -- strike that. Who on behalf of the
 16 board then, or Suburban Bancorp to be created,
 17 negotiated the loan terms?
 18 A. Well, as I recall, it was kind of a -- I
 19 don't want to use the word a canned program, but it
 20 was pretty much standard practice I believe for all
 21 the conversions that were taking place at that
 22 particular time that this was the way they do it.
 23 And I don't recall the specifics of the
 24 loan. But it was pretty much our legal counsel in
 25 Washington basically said, you know, here it is, this
 0016
 1 is normally the way it's done, is this agreeable with
 2 you. And I think the board, as I recall, said yes,
 3 this is fine.
 4 Q. Do you know who the lender was? Who would
 5 you define --
 6 A. I think it was ourselves.
 7 Q. Let me change the wording in the question.
 8 A. Okay.
 9 Q. Who do you understand the lender to be for
 10 that loan?
 11 A. Would have been Suburban Federal.
 12 Q. And do you remember the amount of the
 13 loan?
 14 A. No, I don't.
 15 Q. Was it -- I mean, are we talking in excess
 16 of ten million dollars?
 17 A. No.
 18 Q. In excess of five million?
 19 A. Well, I think it was around 100,000 shares
 20 times \$10 a share, whatever that comes out to.
 21 Q. So about a million dollars?
 22 A. I think, yeah.
 23 Q. Okay. And do you know how many years that
 24 was supposed to be paid off in?
 25 A. It was either five or ten, I think.

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1 Q. Was the loan ever renegotiated?
 2 A. To my -- I don't recall it ever being

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3 renegotiated.
4 Q. Any change in major terms such as interest
5 rates or amounts?
6 A. Not that I recall.
7 Q. Ever extended?
8 A. Not that I recall.
9 Q. Did anybody guarantee the loan?
10 A. Did anybody guarantee the loan?
11 Q. Or any entity?
12 A. Well, I would suspect that Suburban
13 Federal did but I don't know that for a fact. I
14 don't recall.
15 Q. Do you know where all those documents are?
16 A. I have no idea.
17 Q. Now, Suburban Federal did not cease to
18 exist, correct, at the time of the ESOP creation?
19 A. Oh, no.
20 Q. It became a wholly owned subsidiary?
21 A. Of Suburban Bancorp.
22 Q. Now that we're at that point we'll just
23 use the word Suburban.
24 A. Okay.
25 Q. Do you understand? I mean, there is a
0018 difference.
1 A. Yes.
2 Q. If you believe in any answer you need to
3 distinguish, please do so.
4 A. Okay.
5 Q. Otherwise we'll continue to use Suburban.
6 A. That's fine.
7 Q. Were there any bonds issued covering the
8 ESOP plan?
9 A. To my knowledge, no.
10 Q. Were you ever -- strike that. For the
11 ESOP was there ever a plan committee or fiduciaries
12 named to oversee the plan?
13 A. I think there were some directors that
14 were appointed to a committee but I don't -- I don't
15 recall who they are.
16 Q. Were you a member ever --
17 A. No, I don't think so.
18 Q. -- of the plan? Let me change the
19 question.
20 A. I'm sorry.
21 Q. From '93 to the sale in '97, correct?
22 A. Right.
23 Q. Were you ever a fiduciary to the ESOP
24 plan?
25
0019 A. No, sir.
1 Q. Were you ever on a committee that oversaw
2 it or administered it?
3 A. No, sir.
4 Q. Do you know who did during any of those
5 four years?
6 A. Well, there were seven directors and I
7 think there were three on the committee, but I don't
8 know specifically. I don't recall who they were.
9 Q. From '93 till, let's say, December 31 of
10 '96 -- strike that. When did negotiations begin with
11 Fifth Third?
12 A. I'm going to say January, February of '92.
13 Excuse me, of --
14

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15 Q. '97?
 16 A. '97.
 17 Q. Let's go then, just as I said, from
 18 September of '93 through December 31 of '96.
 19 A. Okay.
 20 Q. Was the ESOP plan ever amended?
 21 A. To my knowledge, no. To my recollection,
 22 no.
 23 Q. Did you understand that it could be
 24 amended?
 25 A. Did I understand it could be amended? I
 0020 don't know.
 1 Q. You had no understanding?
 2 A. No.
 3 Q. Had --
 4 A. To me it was set up as a plan to
 5 distribute the stock to the employees and, you know,
 6 that was it. But I would suspect -- well.
 7 Q. What?
 8 A. I was just going to say, since the plan
 9 was set up, I guess it could be amended, but I
 10 didn't -- I never paid much attention to it.
 11 Q. Were there any board resolutions amending
 12 the plan that you know of?
 13 A. Not to my knowledge.
 14 MS. MORAN: What time?
 15 Q. Again, September '93 to December 31 of
 16 '96. That's what we're talking right now?
 17 A. Right. Correct.
 18 Q. Do you know if the three directors on the
 19 committee, whether or not there was an insurance
 20 policy covering their actions as fiduciaries to the
 21 plan?
 22 A. Well, we had all kinds of insurance so
 23 I'm -- I don't know specifically.
 24 Q. Who would know that?
 0021 A. Well, I suspect our insurance provider at
 1 that point in time.
 2 Q. Which was who?
 3 A. Which was Jim De Roberts from Columbus.
 4 Q. Do you know the name of the company?
 5 A. De Roberts.
 6 (Exhibit 7 was marked for identification.)
 7 Q. Mr. Hutchison, you've been handed what's
 8 been marked as Exhibit 7. Let me represent to you
 9 that this is the best I could find. It's unsigned.
 10 But it says "Part II Suburban Bancorp. Inc. Employee
 11 Stock Ownership Plan Trust Agreement Effective Date
 12 July 1, 1993." Do you recall reading a document like
 13 this back there in '93?
 14 A. I'm sure I paged through it at some point
 15 in time and read it but I don't recall specifically.
 16 Q. Okay. Do you know who drafted this
 17 document?
 18 A. No, I don't.
 19 Q. Okay. You said before you thought it was
 20 a canned setup of some type.
 21 A. When I say "canned" -- I think this
 22 document was probably drafted by Housley, Goldberg,
 23 Kantarian out of Washington. When I said "canned,"
 24 what I meant is, there are -- when you go through
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1 these conversions -- and if you do as many
2 conversions as this law firm did, they had pretty
3 well said, okay, you know, this is what, you know, I
4 had in a conversion, this is what happens, these are
5 the benefits, if you will, that are available. And
6 that's what I meant by canned, if you will.

7 Q. Do you know if the trust -- if the ESOP
8 went into effect as early as July of '93?

9 A. It could have. You know, I'm sitting here
10 looking, I'm thinking Coast converted September 30 in
11 1983, and I think we -- we must have converted July
12 1st or June 30 of '93. Yeah, '93. I'm sorry, I got
13 my dates confused.

14 Q. That's fine. But you believe you were
15 never a trustee?

16 A. No, I was never a trustee.

17 Q. Now, did there come a time when you were
18 president of Suburban that you were approached by
19 banks or other S&Ls for merger, for potential merger?

20 A. Yes.

21 Q. Okay. When is the first time that
22 occurred?

23 A. I would estimate 1996.

24 Q. Had you gotten rid of some of the bad
25 loans at that point?

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1 A. Some -- some of them, not all of them.

2 Q. Who was the first to approach you, what
3 other institution?

4 A. We had a company -- Belmont Bancorp out of
5 Belmont, Ohio.

6 Q. How far did those negotiations go?

7 A. Mostly just discussing items and never got
8 to a point where any offer was really made. It was
9 kind of exploratory.

10 Q. Was anything discussed about the fact the
11 company had an ESOP?

12 A. No.

13 Q. What's the next potential suitor? Do you
14 understand that for --

15 A. Sure. I understand. Again, sometime in
16 '96.

17 Q. Who was that?

18 A. Probably Citizens of Dayton.

19 Q. Citizens Bank? Citizens Federal?

20 A. Citizens Federal that eventually merged
21 with Fifth Third, Mr. Kirby.

22 Q. And were these negotiations?

23 A. Just exploratory.

24 Q. Was he aware that there was an ESOP that
25 held substantial stock?

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1 A. If he was, I'm not aware of it.

2 Q. You never discussed that with him?

3 A. No, never discussed it.

4 Q. Who was next?

5 A. First Franklin.

6 Q. Same year?

7 A. Yes.

8 Q. And who did you negotiate with at First
9 Franklin?

10 A. Talked to Tom Simmers (phonetic).

11 Q. Any discussion about the ESOP?

12 A. No, sir.

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13 Q. Any documents exchanged other than --
 14 A. No, nothing.
 15 Q. No formal negotiations?
 16 A. Correct.
 17 Q. Who's next?
 18 A. Fifth Third.
 19 Q. This was sometime in early '97?
 20 A. January or February of '97.
 21 Q. And who approached you on behalf of Fifth
 22 Third?
 23 A. Bob Burns did, and Bob Niehaus.
 24 Q. Had Suburban Bancorp been looking for a
 25 suitor?
 0025
 1 A. Yes.
 2 Q. Had you let it be known that Bancorp might
 3 be available?
 4 A. Yes, I did.
 5 Q. How did you do that?
 6 A. Well, I had conversations with Bob Ernst
 7 probably, I'm guessing now, 1994, something like
 8 that. And that's when Fifth Third, they were out
 9 buying a lot of companies. And Bob -- I knew of Bob
 10 from my previous days at the Federal Home Loan Bank.
 11 He was with I think a thrift up in Hamilton, Ohio.
 12 And he -- we talked and --
 13 Q. This is back in '94?
 14 A. Back in '94.
 15 Q. What did you talk about?
 16 A. It was just general discussion about
 17 banks, et cetera. And he asked me how -- how we were
 18 doing on our -- how are you making out on your
 19 problem assets? I said, we're still working on them.
 20 And it was sort of like, some day when, you know, you
 21 get them under control, perhaps we'll have an
 22 opportunity to chat or talk about it. And I said,
 23 fine.
 24 Q. Did Fifth Third in early '97 approach you
 25 or did you approach them?
 0026
 1 A. I think I called Bob Ernst. I had been to
 2 a, I'll say a seminar for lack of a better word, in
 3 late '96 that Bob put on down at Fifth Third Center.
 4 And I was trying to recall what -- exactly what the
 5 seminar was, but that's not important.
 6 Anyway, we talked, you know, how are things going,
 7 fine.
 8 So I think I told him I might be giving
 9 him a call at some point in time. And then I think
 10 it was in January or February I mentioned to him -- I
 11 called him and he said, let's have lunch. And so we
 12 did.
 13 Q. Prior to that lunch do you know if he
 14 knew -- strike that. Had you told him anything about
 15 an ESOP?
 16 A. No.
 17 Q. You had lunch to discuss potential --
 18 A. Right.
 19 Q. -- negotiations?
 20 A. Yes, sir.
 21 Q. What was discussed at that lunch?
 22 A. He asked if we were -- I told him that we
 23 would probably be interested in, you know, if they
 24 wanted to take a look at us. He said, fine.

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25 And at some point, and I don't recall if
0027

1 it was at that luncheon, but shortly thereafter, he
2 called with what he thought what the price would be,
3 and I said, let me talk to the board.

4 So I mentioned it to the board and
5 obviously we got our legal counsel involved.

6 Q. What was the price that he mentioned?

7 A. I think it was \$20 a share.

8 Q. As of this time did he -- did you inform
9 him that an ESOP --

10 A. No.

11 Q. -- was involved? You had no knowledge
12 whether he knew that or not?

13 A. I have no knowledge.

14 Q. After his \$20 share mentioned on the
15 phone, correct?

16 A. No, this was in person.

17 Q. Oh, this was in person.

18 A. I think it was. I think -- well, when we
19 sat down and talked at lunch, I don't recall if he
20 gave me the price then or did he call me the next day
21 or that afternoon, I don't recall specifically.

22 Q. But you took that offer to the board to
23 discuss?

24 A. I mentioned to the board that I had a
25 meeting with Fifth Third and that they had an

0028
1 interest in the company and they were talking around
2 the \$20 price.

3 Q. And what was the board's reaction?

4 A. They said, why don't you give Harry
5 Kantarian a call, our legal counsel. So I did.

6 Q. Were you involved -- so that was sometime
7 in January or February --

8 A. Yes, sir.

9 Q. -- of '97?

10 A. Yes, sir.

11 Q. And there was an affiliation agreement
12 signed, I believe on March 13 of 1997, which would be
13 Exhibit 4, is that correct?

14 A. Yes, sir.

15 Q. Now, from the time of the \$20 offer,
16 whenever that was in January or February of '97
17 through March 13 of '97, were you involved in
18 negotiations with Fifth Third over the terms of
19 Exhibit 4?

20 A. Not really, no.

21 Q. Who on behalf of Suburban Bancorp was --

22 A. Chris Henn.

23 (Off the record.)

24 Q. If you could turn to page 40 of Exhibit 4,
25 sir. Actually there are two page 40s, two sets of

0029
1 signature lines. Do you see that?

2 A. Yes.

3 Q. Is that your signature?

4 A. That's my signature, yes, sir.

5 Q. And did you write the word "president"
6 there?

7 A. Yes, I did.

8 Q. So that's your handwriting?

9 A. That's my handwriting.

10 Q. And your printing?

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11 A. And my printing. Not very good but it's
12 my printing.

13 Q. Did you have an opportunity to review this
14 document before you signed it?

15 A. Yes.

16 Q. Did you confer with counsel before you
17 signed it?

18 A. Yes, I did.

19 Q. Without telling me what was discussed, did
20 you discuss the subject of the -- what was going to
21 happen with the ESOP with your counsel? I don't want
22 to know what was actually discussed, just if that
23 topic was discussed.

24 A. Since it was part of the benefit package,
25 yes.

0030

1 Q. If you could turn to page 33 of Exhibit 4,
2 sir, paragraph F. Do you see that?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes, I do. Sorry.

6 Q. Was that part of the document that you
7 signed?

8 A. Yes.

9 Q. Do you know whether or not there was any
10 written instrument executed by all the parties that
11 amended this document?

12 A. This specific document?

13 Q. Yeah.

14 A. I'm not -- I don't recall.

15 Q. Okay. Were you involved, sir, in any way,
16 other than through discussions with counsel, in
17 negotiating what was going to happen with the ESOP
18 after the merger?

19 A. Discussions with Chris Henn.

20 Q. Okay. Now, I'm talking, again, prior to
21 signing the March 13 agreement. Okay. I want to get
22 the time frame correct.

23 Did you have discussions with Mr. Henn
24 about what would happen to the ESOP after the merger,
25 prior to when you signed Exhibit 4?

0031

1 A. Well, since Chris and I talked almost on a
2 daily basis, I would say yes.

3 Q. Okay. What do you recall discussing with
4 Mr. Henn about the ESOP prior to March 13, 1997?

5 A. Well, what we discussed was the fact that
6 what we wanted to happen with the ESOP since the ESOP
7 was our -- for the benefit of our employees, it was
8 our intention that the proceeds from the ESOP would
9 be used exclusively for the employees of Suburban
10 Federal.

11 Q. Did you understand that as of the day of
12 the merger or even the day or two before, several
13 employees would be let go of Suburban Federal at the
14 time of the merger?

15 A. Yes.

16 Q. Did you understand that they would then
17 not be members of the Suburban -- strike that, would
18 not be participants in the Suburban ESOP after the
19 date of the merger?

20 A. Well, they were -- it was my understanding
21 that anybody that was working between July 1st of
22 1997 and July 25, 1997 would be participants of the

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23 ESOP.

24 Q. Again, my time frame is still prior to
25 March 13, prior to signing this.

0032

1 A. Oh, I thought we were --

2 Q. No, I'm trying to understand what you knew
3 prior to signing this document.

4 A. Okay.

5 Q. Did you understand that?

6 A. This is back prior to March 13?

7 Q. Right, prior to -- or at the day of
8 signing.

9 A. That's fine. Okay.

10 Q. Did you understand that employees of
11 Suburban would be let go prior to or on the date of
12 the merger?

13 A. Yes.

14 Q. You didn't know who that would be for
15 sure?

16 A. That's correct.

17 Q. But you knew some employees would be
18 let go, correct?

19 A. Yes.

20 Q. Did you understand that only employees
21 could be members of an employee stock ownership plan?

22 A. Yes.

23 Q. Again, this is prior to March 13, 1997,
24 correct?

25 A. Right.

0033

1 Q. What else did you discuss with Mr. Henn
2 prior to March 13, 1997 about the ESOP?

3 A. I think I told Chris that I want to make
4 sure that the -- that those dollars go to the
5 employees of Suburban Federal.

6 Q. Did you read or review with counsel
7 section Roman numeral V.E. of Exhibit 4 prior to
8 signing it?

9 A. I'm sure I did.

10 Q. I'll hand you Exhibits 3 and 4. Attached
11 to Exhibit 3 is another -- looks to be a partial copy
12 of the affiliation agreement --

13 A. Okay.

14 Q. -- in a different format, and Exhibit 4,
15 the one that's actually signed, okay?

16 A. Okay.

17 Q. In either of those documents did you
18 understand that there was any prohibition on Fifth
19 Third amending the ESOP plan after the merger?

20 A. Any prohibition, I'm not aware of it.

21 Q. If you'd like to you can look through
22 there. I don't find any prohibition but --

23 A. No, that's fine.

24 Q. Okay. Prior to March 13, 1997 had you
25 heard the phrase 415 limitations?

0034

1 A. Yes, I had.

2 Q. What did you understand that to be?

3 A. There are limits on how much stock can be
4 distributed to the participants. I don't recall what
5 the percentage limitation was.

6 Q. Did you understand that prior to signing
7 this agreement, Exhibit 4, that Fifth Third was
8 demanding that any decision about the ESOP would be

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9 subject to the 415 limitations?
10 A. Yes.
11 Q. You knew that was an issue, correct?
12 A. Yes.
13 Q. If you could turn to Exhibit 4, page 23
14 and 24, about 20 percent of the way from the
15 bottom --
16 A. That's fine.
17 Q. -- sentence begins, if upon.
18 A. Oh, if upon.
19 Q. Do you see that?
20 A. Yes.
21 Q. Okay. Strike that. We'll start earlier.
22 Do you note -- strike that.
23 When you signed the document, were the IRS
24 private letter rulings 9648054 and 9426048, which is
25 listed throughout the top part of that paragraph,
0035 included in the document?
1 A. Yes.
2 Q. Now, let's go back to that sentence, if
3 upon. Were you involved in negotiating or working
4 out or overseeing in any way the written description
5 and timetable referred to in that sentence? And if
6 it helps you --
7 A. I don't think I --
8 Q. Please?
9 A. I don't think I was.
10 Q. Okay. If you turn to Exhibit 3, the last
11 two pages.
12 A. Okay.
13 Q. Does that refresh your recollection
14 whether or not you were involved with development of
15 that written description?
16 A. I was made aware of it, yes.
17 Q. From Mr. Henn?
18 A. Yes, Mr. Henn.
19 Q. Okay. Now, that same sentence on Exhibit
20 4, page 23, after the reference to the private letter
21 rulings --
22 A. Yes.
23 Q. -- says, "Suburban Bancorp shall apply to
24 the IRS for approval (either through an IRS
0036 determination letter or other means reasonably
1 acceptable to Fifth Third) of a transaction (the
2 transaction)."
3 Did Suburban Bancorp ever apply to the IRS
4 for that approval?
5 A. I don't know.
6 Q. Who would know?
7 A. I would say our legal counsel in
8 Washington would know.
9 Q. What about Mr. Henn?
10 A. Chris would probably know.
11 Q. Do you know if anybody on behalf of
12 Suburban Bancorp applied for IRS approval for such a
13 transaction?
14 A. I'm not aware of it.
15 Q. If you turn to page 24, continuing in that
16 same paragraph, the next sentence begins, "If and
17 only if" --
18 A. Uh-huh.
19 Q. -- "the IRS approves such a Transaction,
20

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21 or Fifth Third otherwise proceeds with the
 22 Transaction without IRS approval." Do you know if
 23 either of those conditions ever occurred?

24 A. I have no idea.

25 Q. Either way?

0037

1 A. Either way.

2 Q. Do you know if any of those conditions
 3 were ever waived?

4 A. Not that I'm aware of.

5 (Off the record.)

6 Q. Looking back at Exhibit 3, in the last two
 7 pages, which is marked as Exhibit B to Exhibit 3.

8 A. I understand.

9 Q. Rhyming today. Did you read this document
 10 before it was sent to Fifth Third?

11 A. I'm sure I did.

12 Q. Could you turn to paragraph 2 B on Exhibit
 13 B to Exhibit 3? Begins, "Based on the \$19.99 per
 14 share value." Do you see that?

15 A. Yes, sir.

16 Q. Do you know when this document B was
 17 created?

18 A. No, I don't.

19 Q. Was it prior to the merger?

20 A. Prior to?

21 Q. The final?

22 A. July 25, yes, sir, I'm sure it was.

23 Q. All right. Do you see where it says, "it
 24 is projected that annual additions resulting from the
 25 discharge of the ESOP loan on June 30, 1998

0038

1 (estimated at" -- I can't read the number, "will be
 2 less than 25% of projected eligible payroll,
 3 (\$328,137) determined based on available data as of
 4 June 30, 1997." Do you see that?

5 A. Yes.

6 Q. Did you understand that to mean that the
 7 415 limitations would not be met?

8 A. I'm not sure.

9 Q. The 25 percent doesn't ring a bell?

10 A. No, it doesn't.

11 Q. Okay. Did you have any role in the
 12 creation of Exhibit B to Exhibit 3?

13 A. Exhibit B to --

14 Q. This is what you're looking at.

15 A. Not that I recall.

16 Q. You reviewed it, though?

17 A. I reviewed it, yes.

18 Q. What did you understand Exhibit B to be
 19 back sometime before July 25, 1997 when you reviewed
 20 it?

21 A. I don't recall what I thought, to be
 22 honest with you.

23 Q. Did you understand that it was something
 24 set forth under the affiliation agreement?

25 A. For the ESOP, yes.

0039

1 Q. Looking still at Exhibit 3, Mr. Hutchison,
 2 turning to page 12 -- strike that. Did you read the
 3 complaint?

4 A. Some time ago.

5 Q. But you have reviewed it?

6 A. Yes, I have.

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7 Q. Okay. Under "Damages" there, you see
8 that, those paragraphs 40, 41, 42?

9 A. Oh, yes.

10 Q. What amount of dollars are you seeking,
11 you, Mr. Hutchison?

12 A. Am I seeking?

13 Q. From Fifth Third?

14 A. Whatever was left in the ESOP plan that
15 should have been given to us. I don't have a dollar
16 figure. I'm not aware of the exact dollar figure.

17 Q. You don't know?

18 A. I have no idea.

19 Q. But on paragraph 40 A --

20 A. On page 12?

21 Q. Yes. You're asking for money in
22 proportion to the amount in the ESOP account as of
23 June 30, 1997, correct?

24 A. Right.

25 Q. But you're uncertain as to the amount?

0040

1 A. I don't know the dollar amount, yes, sir.

2 Q. In the negotiations leading up to the
3 signing, Exhibit 4 --

4 A. March 13.

5 Q. -- March 13 of '97 --

6 A. Yes, sir.

7 Q. -- were there any negotiations over
8 whether Fifth Third could amend the Suburban Bancorp
9 ESOP after the merger, do you recall any discussions
10 on that?

11 A. I don't recall any discussion.

12 Q. Did Suburban -- did Suburban make some
13 contributions to the ESOP after completion of Exhibit
14 B to Exhibit 3 in the amount of \$175,635?

15 A. A contribution or payment of the debt?

16 Q. Either way, whatever you want to call it.

17 A. Well, we would have had to pay down the
18 debt in order to distribute the stock, so, yes.

19 Q. If -- strike that. Do you know whether
20 Suburban, at one time in the negotiations, wanted a
21 complete allocation of the ESOP expense accounts with
22 ignoring the 415 limitations?

23 A. I would -- I don't know specifically that
24 we did. It's a good idea if we could get it.

25 Q. Did you know that Fifth Third rejected

0041

1 that position?

2 A. I don't recall.

3 Q. Do you know what percent -- strike that.
4 You didn't deal with the nuts and bolts of the ESOP
5 percentages and numbers, did you?

6 A. I have no idea. No, sir.

7 Q. We'll skip all that then.

8 (Off the record.)

9 Q. Do you know what a VCR application is,
10 other than on TV?

11 A. No.

12 Q. Okay.

13 (Exhibit 8 was marked for identification.)
14 Q. Sir, you've been handed what's been marked
15 as Exhibit 8. Do you recognize that document?

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. It's the minutes of a board of directors

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19 meeting.
20 Q. Okay. Were you chairman of the board?
21 A. No. Ken Kerr was chairman.
22 Q. Ken who?
23 A. Ken Kerr, K-e-r-r.
24 Q. Were you secretary to the board? Is that
25 your signature?
0042
1 A. Yep, that's me. Yes, sir.
2 Q. Mr. Buchheid, was he secretary?
3 A. He was secretary of the company.
4 Q. Oh, of Suburban Federal?
5 A. Yes. I was -- I had the pleasure of doing
6 the minutes of the meetings.
7 Q. It's always fun, isn't it?
8 A. Yes.
9 Q. Now, on page 2, the last substantive
10 paragraph begins, "President Hutchison requested."
11 Do you see that paragraph?
12 A. Yes, sir.
13 Q. Now, it mentions -- this is dated March
14 19?
15 A. Right.
16 Q. That was the date of the board meeting,
17 not the date you did the minutes? I'm just trying to
18 figure --
19 A. Yes. This was the minutes of the board
20 meeting, yes.
21 Q. And the board meeting lasted about 45
22 minutes?
23 A. This was a special -- I'm assuming, yes.
24 Q. You mentioned in this paragraph -- it
25 mentions an action taken by Suburban's executive
0043
1 committee on March 17 to indefinitely suspend the
2 401(k) profit sharing plan effective immediately. Do
3 you see that?
4 A. Yes.
5 Q. Do you know what that's in reference to?
6 A. I don't recall.
7 Q. Then next sentence says, "This action was
8 taken to maximize contributions under the ESOP." Do
9 you know what that's referring to?
10 A. No, sir, I don't.
11 Q. Would Mr. Henn have more information on
12 that?
13 A. I would -- I'm not sure, to be honest with
14 you. I don't recall. You know, you're asking me
15 eight years ago what happened. I don't recall.
16 Until I saw these minutes I don't recall writing
17 them.
18 Q. I understand that. That's the reason I
19 handed it to you, to see if I could refresh your
20 recollection.
21 A. I don't know. I honestly -- everything I
22 say is honest. I don't know what this is in
23 reference to.
24 Q. But whatever it was, the board approved?
25 A. Yes.
0044
1 Q. Ratified the action?
2 A. Yes. The board approved, yes.
3 (Exhibit 9 was marked for identification.)
4 Q. You've been handed, sir, what's been

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5 marked as Exhibit 9. If you need a minute to read
6 it, please feel free to do so.

7 A. Okay.

8 Q. And this is a letter from a Mark Poerio?

9 A. Yes.

10 Q. Poerio?

11 A. Poerio.

12 Q. And it's to you?

13 A. Yes.

14 Q. As president of Suburban Bancorp?

15 A. Yes, sir.

16 Q. Now, second paragraph of this letter
17 mentions that "you will find a Section 415 analysis
18 with respect to termination of Suburban's ESOP." And
19 that's what's attached, correct?

20 A. Yes.

21 Q. Now, as of May 23rd, 1997 you knew that
22 there would be employees laid off at the time of the
23 merger, correct?

24 A. I was told that they would hire as many as
25 possible. It didn't say all. So I assumed based on

0045 1 that that some people would be let go, yes.

2 Q. Did you know whether or not you would be
3 staying on as of this date?

4 A. I didn't know for sure but I had a strong
5 feeling.

6 Q. What was that strong feeling?

7 A. That I would not be there.

8 Q. And that's because the idea is to cut down
9 on the number of management?

10 A. Sure.

11 Q. That makes cost efficiency?

12 A. Yes, sir.

13 Q. On the last sentence of that paragraph --
14 strike that. Did you understand that the amount that
15 could be distributed from the ESOP is based upon the
16 amount of income received by those employees?

17 A. Yes.

18 Q. That's what we're talking about, the 415
19 limitations?

20 A. Right.

21 Q. Correct?

22 A. Yes, sir.

23 Q. Did you know whether or not the members --
24 strike that. Did you understand -- strike that.

25 What did you understand the attachment to

0046 1 Exhibit 9 to represent to you?

2 A. My interpretation is that he was shown
3 approaches that would give us maximum amount of ESOP
4 in '97 and that also the rest of it in '98.

5 Q. Did you -- that's fine. On the first page
6 of the attachment, page 1 of the attachment SU1508,
7 did you understand that at least that analysis
8 assumed the inapplicability of section 415?

9 MS. MORAN: Objection to the extent it
10 calls for a legal conclusion.

11 MR. FISCHER: That's fine. I was asking
12 his understanding.

13 A. Would you repeat the question?

14 Q. Sure. Did you understand that the
15 analysis forwarded to you on the first page of the
16 attachment, which is page SU1508, assumes the

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17 inapplicability of IRS code section 415?

18 A. Are you saying 415 didn't apply?

19 Q. I'm asking your understanding. Let me
20 point, there's three asterisks at the bottom

21 A. So it says, assumes the inapplicability of
22 section 415.

23 Q. You understood what that meant --

24 A. Yes.

25 Q. -- at the time?

0047

1 A. Yes.

2 Q. Did you -- do you recall reading this
3 document?

4 A. No, I don't.

5 Q. Do you have any doubt that you did at
6 least review it?

7 A. I'm sure I reviewed it.

8 Q. And in the first asterisk it refers to
9 section Roman numeral V.E.1, which is the section we
10 were reviewing before on Exhibit 4, correct?

11 A. Right. Yes, sir.

12 Q. Let me ask this. Did you -- did you
13 understand back then -- not now, but back then -- did
14 you understand these two analyses?

15 A. I'm assuming I did.

16 Q. If not, would you have asked Mr. Henn or
17 somebody --

18 A. Yes.

19 Q. -- to go through it with you?

20 A. Yes.

21 Q. What did you understand these two analyses
22 to show back in May of '97?

23 A. Analysis of the ESOP, payroll that we
24 needed to use up the -- the shares remaining in the
25 ESOP.

0048

1 Q. Did you understand that if payroll wasn't
2 meant -- met, sorry. Did you understand that if
3 payroll was not met, that the shares would not be
4 distributed because of the 415 limitations?

5 A. Yes, I did.

6 (A recess was taken from 9:58 to 10:05.)

7 (Exhibit 10 was marked for
8 identification.)

9 Q. Mr. Hutchison?

10 A. Yes, sir.

11 Q. You've been handed what's been marked as
12 Exhibit 10.

13 A. Yes.

14 Q. Do you recognize that document?

15 A. Yes, I do.

16 Q. Can you tell us what this is?

17 A. This is the document we sent out to all
18 the stockholders prior to the vote on the merger with
19 Fifth Third.

20 Q. And this document would also have gone to
21 every member of the ESOP because they were employees?

22 A. Employees, yes.

23 Q. Correct?

24 A. Yes, sir.

25 Q. Was a vote taken on whether or not to

0049

1 approve?

2 A. Yes.

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3 Q. And the documentation that was sent to the
4 shareholders, this is the packet?
5 A. That's the document, yes, sir.
6 Q. That included a copy of the affiliation
7 agreement, did it not?
8 A. Yes, I think it did.
9 Q. It would start on page -- I believe page B
10 -- I'm sorry, bottom number SU0553?
11 A. Yes, sir.
12 Q. And the page is denominated A1 at the
13 bottom?
14 A. Yes. It's a copy of the affiliation
15 agreement, yes, sir.
16 Q. And so all the ESOP participants would
17 have received a copy of that?
18 A. Yes, sir.
19 Q. And if you turn to page 36 of the main
20 document, and page 37, there's also a description of
21 the employee stock ownership plan and how the
22 affiliation agreement provides for it, correct?
23 A. Yes, sir.
24 Q. That also would have gone --
25 A. Yes, sir.
0050
1 Q. -- to all the ESOP participants?
2 A. Yes, sir.
3 Q. By the way, how did the vote come out?
4 A. With mostly yeses. I honestly don't
5 remember the count but --
6 Q. Were there any nos?
7 A. Oh, there's probably always a few.
8 Q. Not too many?
9 A. Not too many.
10 Q. How many total shares about were there
11 available to be voted?
12 A. I think there were --
13 Q. Approximately?
14 A. A million and a half, roughly.
15 Q. 1,500,000 share?
16 A. 1,500,000 shares, I think. I don't
17 recall.
18 Q. In the order of magnitude, did even 1
19 percent vote no?
20 A. I don't recall. I don't know.
21 Q. 10 percent vote no?
22 A. No. No. 10 percent would be too high.
23 Q. 5 percent?
24 A. 5 percent.
25 Q. Okay. It was a diminutive number?
0051
1 A. Diminutive?
2 MS. MORAN: I don't think he knows.
3 Q. I'm just asking his best recollection.
4 A. That was eight years ago unfortunately.
5 Q. I understand. Was there a stockholder
6 meeting to approve the merger?
7 A. Yes, there would have been.
8 Q. Did you attend that meeting?
9 A. I conducted it.
10 Q. You chaired it?
11 A. Chaired it, excuse me.
12 Q. Was there any discussion about the -- what
13 was going to happen with the employee stock ownership
14 plan?

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15 A. Not to my recollection.
 16 Q. Issues relating to specific provisions of
 17 the ESOP were handled by Mr. Henn and not by you?
 18 A. That's correct.
 19 (Exhibit 11 was marked for
 20 identification.)
 21 Q. Mr. Hutchison, I handed you what's been
 22 marked as Exhibit 11, I believe.
 23 A. Yes.
 24 Q. Who is Mr. Zihlman?
 25 A. Mr. Zihlman was controller, reported to

0052

1 Chris Henn.
 2 Q. And who is Mr. Hogans?
 3 A. He is a lawyer with Housley, Goldberg,
 4 Kantarian.
 5 Q. He's one of your lawyers?
 6 A. One of our lawyers.
 7 Q. Looking at the attachment, that's your
 8 name.
 9 A. That's my name, yes, sir.
 10 Q. And do you know what top heavy testing is?
 11 A. I think in order for the plan to qualify
 12 it can't be all given to the highest paid employees.
 13 That may not be quite accurate but that's close
 14 enough.
 15 Q. That's your understanding?
 16 A. That's my understanding.
 17 Q. In other words, so that top employees
 18 don't get all the money?
 19 A. That's right.
 20 Q. Do you know why this top heavy testing was
 21 done back in --
 22 A. I don't recall.
 23 Q. -- May?
 24 A. Specifically? I'm assuming it was to see
 25 if we met the criteria, or the test, if you will.

0053

1 Q. You don't recall any discussions with
 2 Mr. Zihlman or Mr. Henn about this?
 3 A. Well, I think there's always discussion
 4 about is the plan going to qualify because of the
 5 number of -- the base of employees versus how many
 6 are high paid.
 7 Q. So you do recall some discussions?
 8 A. Some, yes.
 9 Q. Okay. By this point, July 8, 1997, of the
 10 people listed on the attachment, first page
 11 attachment to Exhibit 11, did you know which of these
 12 people would be staying on and which would be let go
 13 at the time of the merger or have a good feel for it?
 14 A. I had a good idea that none of them would
 15 be staying on.
 16 Q. None of these people that would be tested
 17 for top heavy?
 18 A. Yes.
 19 Q. And they would be -- would you consider
 20 this list kind of a management group?
 21 A. I would take Bob Zihlman out and include
 22 the rest, yes.
 23 Q. Were there any others that you considered
 24 management at Suburban that are not on this list at
 25 about this time of July of '97?

0054

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1 A. I think Lisa Whitman at that time.
2 Q. What was her position?
3 A. She was branch administrator.
4 Q. How many branches did you have at that
5 point?
6 A. Seven.
7 Q. She oversaw the people running those
8 branches?
9 A. Right.
10 Q. Did you know if she was going to stay on
11 at that point?
12 A. I had no idea.
13 Q. At that point you did understand that the
14 more people let go, the less money that could be
15 distributed from the ESOP?
16 A. This is also 1994. Okay.
17 Q. I understand. I was just -- he's sending
18 it out in '97.
19 A. Okay.
20 Q. He says, I believe, I prepared this
21 schedule back in May of this year.
22 A. Okay. That's fine.
23 MS. MORAN: Was there a question on the
24 table?
25 MR. FISCHER: No, there is not.
0055
1 Q. At this time of July of '97 -- strike
2 that.
3 A. Yes, I did. I did understand.
4 MS. MORAN: That's what I want to make
5 sure he answered.
6 MR. FISCHER: Let's clear that up.
7 Q. Did you understand that as more and more
8 people, especially people with high incomes, were let
9 go, there would be less and less money able to be
10 distributed from the ESOP later on?
11 A. Yes.
12 Q. This was as of July of '97?
13 A. Right. Yes, sir.
14 Q. Let's talk about the period from March
15 13 -- strike that. Let's do it this way.
16 (Exhibits 12 and 13 were marked for
17 identification.)
18 Q. Sir, you've been handed two documents, one
19 marked Exhibit 12 and one marked Exhibit 13. And do
20 you recognize those two documents?
21 A. Yes, sir.
22 Q. And Exhibit 12, what do you recognize that
23 to be?
24 A. It's the resolution of the sole
25 shareholder, which is Suburban Bancorp of Suburban
0056
1 Federal.
2 Q. And that's to help facilitate the merger?
3 A. Facilitate the merger, yes, sir.
4 Q. And what do you understand Exhibit 13 to
5 be?
6 A. These are the resolutions approving the
7 merger.
8 Q. And were these -- did this -- did these
9 actions of July 16 take place after the stockholder
10 meeting?
11 A. Stockholder meeting I believe was July
12 1st, so, yes, they did.

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13 Q. And, in effect, they were to authorize
14 what the shareholders voted on?

15 A. Right. Yes, sir.

16 Q. From March 13 of '97 to July 16 of '97,
17 you signed these two documents, correct?

18 A. Yes, sir.

19 Q. Did you have any further discussions with
20 Mr. Henn about what was going to happen with the ESOP
21 plan after the merger?

22 A. Oh, I'm sure I did.

23 Q. Okay. And, again, I'm differentiating
24 from before March 13 to now we're after March 13 up
25 to the approval of the merger.

0057

1 A. Yes.

2 Q. Could you tell me what you recall being
3 discussed about the ESOP plan during that period?

4 A. I think the thing we always discussed was
5 the distribution of the shares, how they were going
6 to be accomplished. I don't remember the specific
7 conversations that I had because we spoke I would say
8 daily or almost daily relative to the whole merger.

9 Q. What do you recall your understanding what
10 was going to happen to the payouts from the ESOP that
11 you learned from March 13 and prior to July 16 of
12 1997? Is it any different than what you thought
13 prior to March 13?

14 A. Not that I recall.

15 Q. Your prior testimony fills us in on that?

16 A. Yes. Yes.

17 Q. Prior to March 13, 1997 -- are we back
18 there?

19 A. I'll try.

20 Q. All right. From the time you first went
21 to the seminar and saw Mr. Ernst --

22 A. Okay.

23 Q. -- till March 13, 1997 when you signed the
24 affiliation agreement --

25 A. Okay.

0058

1 Q. -- did you have any discussions with
2 anyone at Fifth Third or any representative of Fifth
3 Third concerning what would happen with the ESOP
4 plan, that is the Suburban ESOP plan?

5 A. Not to my recollection.

6 Q. All your discussions were with Mr. Henn
7 and your counsel?

8 A. Yes. Yes, sir.

9 Q. Did you have any discussions with anyone
10 else, other than counsel, about the Suburban ESOP
11 plan after attending the seminar given by Mr. Ernst
12 up to and including March 13, 1997?

13 A. May have discussed it with John Buchheid,
14 a couple of the key employees, but not -- no one
15 other than that that I recall.

16 Q. What did you discuss, probably discuss,
17 with Mr. Buchheid and the other key employees?

18 A. Just --

19 Q. What did you discuss with him, how would
20 it occur?

21 A. That we -- eventually the employees of
22 Suburban Federal would receive all of the shares of
23 the stock in the ESOP plan or the value of the stock
24 in the ESOP plan over some period of time.

kv77211-1

25 Q. Mr. Hutchison, after March 13 and prior to
0059

1 July 16 did you have any discussions with anyone at
2 Fifth Third about how the Suburban ESOP would
3 operate?

4 A. Not that I recall.

5 Q. Did you have any discussions with anyone
6 other than Mr. Henn about how the Suburban ESOP would
7 operate during that time period from March 13 to July
8 16?

9 A. John Buchheid and a couple of others.

10 Q. Your answer would be the same?

11 A. It would be the same.
12 (Exhibit 14 was marked for
13 identification.)

14 Q. I've handed you what's been marked as
15 Exhibit 14. Do you recognize those documents?

16 A. Yes, I do.

17 Q. First of all, does the last page go with
18 the first several pages?

19 A. I don't know why.

20 Q. I'm asking -- this is the way --

21 A. I don't know.

22 Q. You don't know either way?

23 A. I have no idea.

24 Q. I'm asking because it seems --

25 A. Other than the fact it does say in here

0060

1 that all stock options have been exercised, and I
2 think that was one of the requirements of the
3 affiliation agreement, that we -- anybody that had
4 stock options had to exercise them prior to July 25.

5 Q. And did that occur?

6 A. Yes. To my knowledge it did, yes.

7 Q. That's your signature?

8 A. Yes, sir. Yes, sir, it is.

9 Q. So did you -- you recall getting a copy of
10 this letter? Your name is on a cc there.

11 A. I'm sure I did.

12 Q. Okay. Do you recall reviewing it?

13 A. Yes.

14 Q. Did you have any comments or questions?

15 A. Just wished the number was bigger.

16 Q. Don't we all.

17 A. No, I don't -- I don't have any --

18 Q. Do you have any recollection of any
19 discussions about this?

20 A. No, sir.

21 Q. Do you -- strike that. The closing date
22 was July 25th or 26th?

23 A. I thought it was the 25th.

24 Q. Okay. Was that your last day of
25 employment with Suburban?

0061

1 A. Yes, sir.

2 Q. What have you done since?

3 A. I went to work for Franklin Savings for a
4 couple years till 2000, and I went back to work at
5 the Federal Home Loan Bank.

6 Q. Are you still employed there?

7 A. Yes, sir.

8 Q. What are you doing for the Federal Home
9 Loan Bank?

10 A. I'm involved in what we call our mortgage

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11 purchase program. We buy mortgages from our member
12 institutions.

13 Q. Nothing to do with ERISA, ESOP or mergers
14 of banks?

15 A. No, sir.

16 Q. At Franklin did you have any involvement
17 with any of these subjects there?

18 A. No, sir.

19 Q. What did you do at Franklin?

20 A. I was involved in their holding company,
21 trying to find assets to purchase.

22 (Exhibit 15 was marked for
23 identification.)

24 Q. You've been handed what's been marked as
25 Exhibit 15. Do you recognize that document?

0062

1 A. Yes, sir.

2 Q. And that is your signature on the third
3 page?

4 A. Yes, it is.

5 Q. Prior to July 25, 1997, had you ever had a
6 contract with Suburban, an employment contract?

7 A. Prior to, yes, I did.

8 Q. Okay. And when was that entered into?

9 A. I would guess, estimate, 1993.

10 Q. About the time of the conversion?

11 A. At the time of the conversion, yes, sir.

12 Q. And can you tell me generally what that
13 contract dealt with?

14 A. It was a three year contract. Each year
15 it was -- the board had to renew it or not renew it,
16 and if I was terminated, I would get a payment,
17 terminated for other than cause I would get some kind
18 of a severance package, yes.

19 Q. Did it guarantee you any benefits,
20 medical, health, were those included in the
21 agreement?

22 A. I think it was. I don't recall
23 specifically. I'm sure it -- as I recall, whatever
24 benefits were available to Suburban I was entitled
25 to.

0063

1 Q. Okay. Did you read Exhibit 15 before you
2 signed it?

3 A. Sure. Yes, I did.

4 Q. And did you understand under paragraph 5
5 that that was a release of claims based upon that
6 employment contract?

7 A. Yes.

8 Q. Was the ESOP a benefit generally available
9 to the employees of Suburban?

10 A. Yes, it was.

11 Q. It was a benefit that you got as part of
12 your employment?

13 A. Yes, it was.

14 Q. Did you understand, Mr. Hutchison, that
15 after the merger Fifth Third would become the trustee
16 or the fiduciary for the ESOP?

17 A. Yes.

18 Q. Suburban ESOP?

19 A. Yes.

20 (Exhibit 16 was marked for
21 identification.)

22 Q. You've been handed what's been marked as

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23 Exhibit 16. I'd like to ask you to turn to what's
24 marked as page 4 at the top. Do you see where
25 "J Hutchinson" is listed under an entry for 6/17/99?

0064

1 A. Name is spelled wrong, but, yes.
2 Q. Okay. You would believe, because it also
3 refers to Mr. Henn and Mr. Zihlman and Mr. Buchheid,
4 that that's referring to you?
5 A. Yes.
6 Q. At some time did you receive a
7 distribution from Fifth Third?
8 A. Yes, I did.
9 Q. Okay. And you're not suing on that,
10 correct?
11 A. Correct.
12 Q. That's all been taken care of?
13 A. Yes.
14 Q. You believe that you -- except for what
15 you've alleged here in the complaint, you've been
16 properly compensated --
17 A. Yes.
18 Q. -- and taken care of?
19 A. Yes, sir.
20 Q. Nothing else outstanding?
21 A. Nothing else that I'm aware of.
22 Q. On July 15 -- sorry about that. On July
23 25, 1997, how many employees of Suburban Bancorp were
24 there, approximately?
25 A. Oh, 60, 65.

0065

1 Q. Full time?
2 A. I would say yes, in that ballpark. I
3 don't recall exactly.
4 Q. And as of July 25 or 26 how many of those
5 employees became employees of Fifth Third at the time
6 of the merger?
7 A. I don't recall.
8 Q. Some were let go?
9 A. Yes. I would say -- yes, some were
10 let go.
11 Q. More than 10?
12 A. Yes.
13 Q. More than 20? I'm just trying to get
14 a range of magnitude.
15 A. I'm saying 20, 25 people.
16 Q. Were let go?
17 A. Yes.
18 Q. If I gave you a list would you be able to
19 tell me who you recall was let go and who wasn't?
20 A. You can give me the list, I'm not sure I
21 can recall, to be honest with you.
22 Q. Okay.
23 A. But there were -- there were several that
24 were let go.
25 Q. Did you keep up with the people that were

0066

1 actually kept on by Fifth Third at all?
2 A. No, not on a continuing basis.
3 Q. Did you keep up with anyone who was kept
4 on by Fifth Third?
5 A. I've had occasional conversations with a
6 couple people but I haven't -- I haven't socialized
7 with anybody at Suburban since 1997.
8 Q. Have you kept any contact with Mrs. Henn?

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9 A. No. Now, I hate to ask this, which
 10 Mrs. Henn?
 11 Q. Lisa.
 12 A. No, I haven't talked to Lisa since the day
 13 we walked out the door.
 14 Q. You do understand she's at Fifth Third?
 15 A. I know she works there. I don't know what
 16 she does. Well, let me put it this way. I knew she
 17 was there, I don't know that she's still there.
 18 MR. FISCHER: Why don't we take a couple
 19 minutes, maybe organize my thoughts.
 20 (A recess was taken from 10:37 to 10:50.)
 21 Q. Mr. Hutchison, from '93 through July of
 22 '97 did you receive what are known as SPDs, Summary
 23 Plan Descriptions, as an employee, about the ESOP?
 24 A. I'm assuming we did.
 25 Q. Do you know what an SPD is?

0067

1 A. We get summary documents I think of all
 2 the plans that we had, yes. I don't recall
 3 specifically receiving one on ESOP.
 4 Q. But you do recall receiving some SPDs?
 5 A. Yes.
 6 Q. From January 1 of '97 through March 13,
 7 this time, '97 did you have any discussions with
 8 Robert Niehaus of Fifth Third?
 9 A. I'm sure I had discussions with
 10 Mr. Niehaus.
 11 Q. Any discussions about the ESOP or how it
 12 would be handled?
 13 A. Not to my recollection. He was more
 14 involved with branches than anything else.
 15 Q. Has anybody else, other than counsel,
 16 discussed with you whether or not they had any
 17 discussions with Mr. Niehaus about the ESOP?
 18 A. Not that I recall.
 19 Q. Any discussions with Paul Reynolds, again
 20 from January through March 13 of 1997?
 21 A. Not to my knowledge.
 22 Q. None at all?
 23 A. No, I don't think so.
 24 Q. What about from March 13, '97 through the
 25 close on July 25?

0068

1 A. I think I, as I recall, had one discussion
 2 with Paul Reynolds. I don't recall what that
 3 discussion was.
 4 Q. Do you have -- has anybody told you that
 5 they discussed anything about the Suburban ESOP with
 6 Mr. Reynolds other than counsel?
 7 A. Would you repeat that?
 8 Q. Other than from counsel --
 9 A. Okay.
 10 Q. -- has anyone told you about any
 11 discussions they had with Mr. Reynolds about what
 12 would happen with the Suburban ESOP?
 13 A. No, not that I recall.
 14 Q. Do you know who James Gerden (phonetic) or
 15 Jim Gerden is? That name ring a bell?
 16 A. No.
 17 Q. You don't think you've ever spoken with
 18 him?
 19 A. I don't think so.
 20 Q. What about Richard or Dick Levo, L-e-v-o?

kv77211-1

21 A. No.
 22 Q. No discussions?
 23 A. To my knowledge I don't recall ever
 24 hearing the name.
 25 Q. Has anybody ever told that you they
 0069
 1 discussed anything about the Suburban ESOP with
 2 Mr. Gerden or Mr. Levo?
 3 A. No, sir.
 4 Q. And Mr. Ernst, at any time did you discuss
 5 anything about the ESOP with Mr. Ernst of Fifth
 6 Third?
 7 A. Not that I recall.
 8 Q. Has anybody told you that they discussed
 9 anything about the ESOP with Mr. Ernst?
 10 A. No.
 11 Q. After the merger on July 25, 1997, have
 12 you had any discussions with anyone representing
 13 Fifth Third?
 14 A. No. Wait, let me correct that. We had a
 15 meeting probably in 1999 with Paul Reynolds, I think
 16 maybe Bob Ernst was there, I don't recall if Bob
 17 Niehaus was there, Chris Henn, myself, when we
 18 started discussing the issue of where we are today.
 19 Q. Okay. And so Mr. Reynolds was at this
 20 meeting and Mr. Ernst?
 21 A. I think, as I recall.
 22 Q. You were there?
 23 A. I was there.
 24 Q. Mr. Henn?
 25 A. Chris was there.
 0070
 1 Q. Mr. Buchheid?
 2 A. I'm not sure.
 3 Q. Were any attorneys representing you and
 4 Mr. Henn there?
 5 A. Not to my recollection.
 6 Q. Were there any attorneys, except
 7 Mr. Reynolds is an attorney, but other than that?
 8 A. I don't recall who all was was, to be
 9 honest. I just don't know.
 10 Q. Do you recall where the meeting took
 11 place?
 12 A. Meeting took place in the office building
 13 on Walnut across from -- from Fifth Third. Is it the
 14 Mercantile Building maybe?
 15 Q. There's one at 530 Walnut right across the
 16 walkway there.
 17 A. Across the walkway. Well, it was in an
 18 older building.
 19 Q. Right.
 20 A. That's where it took place.
 21 Q. You believe it was Mr. Reynolds' offices?
 22 A. I believe it was probably his conference
 23 room.
 24 Q. Let me represent to you the 530 Building
 25 is the legal department. Does that make sense?
 0071
 1 A. Yes, sir.
 2 Q. Conference room with a pretty long table
 3 in it, correct?
 4 A. Yes, sir.
 5 Q. Some legal books?
 6 A. Very impressive.

kv77211-1

7 Q. Some legal books?
 8 A. Yes.
 9 Q. Okay. And at least Mr. Reynolds,
 10 Mr. Ernst, Mr. Henn and you were there?
 11 A. Yes.
 12 Q. Anybody else that you can recall?
 13 A. I don't recall specifically. There were
 14 additional people but I don't recall who they were.
 15 Q. And did you or Mr. Henn ask for this
 16 meeting or did Fifth Third? How was it initiated?
 17 A. I got a call from Chris Henn when we
 18 started discussing about what was done with the
 19 unallocated shares and -- and he -- as I recall, he
 20 indicated that he wanted to have a meeting with Fifth
 21 Third. And I said, fine, I'd be happy to attend.
 22 And we went down, we met with them, and that was it.
 23 Q. From the time of the merger to that
 24 discussion with Mr. Henn --
 25 A. Yes.

0072

1 Q. -- did you discuss what happened with the
 2 Suburban ESOP with anybody?
 3 A. I don't think I did.
 4 Q. Is that the first time you heard of an
 5 issue with the Suburban ESOP?
 6 A. I believe.
 7 Q. What did Mr. Henn tell you about this
 8 issue involving the Suburban ESOP?
 9 A. Well, we discussed what happened with the
 10 remaining shares of stock and that's when he -- "he"
 11 being Chris, indicated that it was his understanding
 12 that they took those shares or the cash value of the
 13 shares and distributed it to employees of Fifth
 14 Third.
 15 Q. Do you understand -- did he say whether or
 16 not any former employees of Suburban Bancorp received
 17 any of these distributions of monies?
 18 A. I think he did say yes, they did.
 19 Q. Had -- strike that. Had you inquired ever
 20 before, after the merger but before that, about what
 21 had happened with the Suburban Bancorp ESOP?
 22 A. I think I had one conversation prior to
 23 that with Chris and I wasn't -- I'm not sure we knew
 24 at that point in time what had taken place.
 25 Q. Did Mr. Henn tell you anything else during

0073

1 that conversation, that is to try to set up a meeting
 2 with Fifth Third?
 3 A. Not that I recall.
 4 Q. Did you discuss anything else with him
 5 about the ESOP?
 6 A. Not that I recall.
 7 Q. So you attended a meeting, correct?
 8 A. Yes, sir.
 9 Q. And who, let's say, led the meeting?
 10 A. I think Chris asked the question or --
 11 let's see, I don't recall. I think Chris kind of led
 12 it from our side and I -- I don't know who led it
 13 from the other side.
 14 Q. Okay. And after pleasantries, somehow the
 15 substantive discussion began?
 16 A. Sure.
 17 Q. What did Mr. Henn say during this meeting?
 18 A. Just discussed what our understanding of

kv77211-1

19 the -- how the distribution of the ESOP was supposed
 20 to take place and the fact that it didn't. And we,
 21 you know, in essence didn't think it was right,
 22 wasn't the way we understood it. And that's pretty
 23 much it from our side.

24 Q. What did he say?

25 A. I don't recall.

0074

1 Q. Did anybody from Fifth Third respond?

2 A. Well, I'm sure -- I don't -- well, yes,
 3 someone responded. I don't remember exactly who it
 4 was. I'm assuming it probably was Paul Reynolds and
 5 I think, well --

6 Q. Do you recall what he said?

7 A. Well, all I recall is basically that they
 8 weren't changing the position that they'd taken.

9 Q. What position was that?

10 A. That they were -- that they were right in
 11 distributing the funds or making those funds
 12 available to others outside of just Suburban Federal
 13 employees.

14 Q. Did anybody from Fifth Third say anything
 15 else?

16 A. I don't recall.

17 Q. How long was the meeting?

18 A. 45 minutes.

19 Q. At -- now, let's go back. From '93 to
 20 '97, I think you've testified that there were
 21 trustees or fiduciaries for the ESOP, correct?

22 A. Yes, sir.

23 Q. And that you at least for some plans
 24 received SPDs?

25 A. Yes.

0075

1 Q. Maybe for the ESOP, maybe not, correct?

2 A. Right. Yes, sir.

3 Q. Do you recall if there was a mechanism to
 4 complain about benefits being paid or not paid in
 5 that ESOP if somebody denied you a benefit?

6 A. I assume in there there's -- you know, you
 7 can go to ERISA, et cetera, et cetera, yes.

8 Q. There's some mechanism to file something
 9 with some appellate judge or administrator, correct,
 10 and if that doesn't work you can go to the Department
 11 of Labor?

12 A. Yes.

13 Q. Okay. To your knowledge, other than this
 14 meeting, has anybody spoken to anybody at Fifth Third
 15 about this issue?

16 A. I have not.

17 Q. Do you know of anybody who has? I'm not
 18 talking about the litigation.

19 A. I think Claudia Allen from Strauss & Troy
 20 would have talked to someone at Fifth Third but I
 21 don't recall the time frame.

22 Q. But you don't know of any formal objection
 23 or formal complaint filed pursuant to the plan?

24 A. Correct.

25 Q. Correct?

0076

1 A. That's right. Yes, sir.

2 Q. Other than information from your counsel,
 3 do you have any papers or documents relating to the
 4 Suburban Bancorp ESOP at home or in some office

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5 somewhere?

6 A. I probably just had the affiliation
7 agreement and that's it.

8 Q. For now, no further questions.

9 MS. MORAN: We'll have signature.

10
11
12 _____
13 JOSEPH F. HUTCHISON

14 DEPOSITION CONCLUDED AT 11:03

15 A. M
16
17
18
19
20
21
22
23
24
25

0077
1 C E R T I F I C A T E

2 STATE OF OHIO :

3 : SS

4 COUNTY OF CLERMONT :

5 I, Karen Volk, RPR, the undersigned, a duly
6 qualified and commissioned notary public within and
7 for the State of Ohio, do hereby certify that before
8 the giving of his aforesaid deposition, JOSEPH F.
9 HUTCHISON was by me first duly sworn to depose the
10 truth, the whole truth and nothing but the truth;
11 that the foregoing is the deposition given at said
12 time and place by JOSEPH F. HUTCHISON; that said
13 deposition was taken in all respects pursuant to
14 stipulations of counsel; that I am neither a relative
15 of nor employee of any of the parties or their
16 counsel, and have no interest whatever in the result
17 of the action; that I am not, nor is the court
18 reporting firm with which I am affiliated, under a
19 contract as defined in Civil Rule 28(D).

20 IN WITNESS WHEREOF, I hereunto set my hand and
21 official seal of office at Batavia, Ohio, this ____
22 day of _____, 2005.
23

24 My commission expires: Karen Volk, RPR
25 September 17, 2007. Notary Public - State of Ohio